

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

ANTHONY BRANCH,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-10-54-W
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

**REPORT AND RECOMMENDATION:  
THE PETITIONER'S SUMMARY JUDGMENT MOTION**

Mr. Anthony Branch is a state prisoner who seeks habeas relief under 28 U.S.C. § 2254, and the undersigned has recommended denial of the petition.

In his reply, Mr. Branch moved for summary judgment.<sup>1</sup> But the suggested denial of habeas relief would moot the Petitioner's summary judgment motion.<sup>2</sup> As a result, the Court should deny Mr. Branch's motion on grounds of mootness.<sup>3</sup>

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<sup>1</sup> See Petitioner's Objection to Respondent Response to Writ of Habeas Corpus and Petitioner's Motion for Summary Judgement (Apr. 27, 2011).

<sup>2</sup> See *Harrell v. United States*, 443 F.3d 1231, 1233, 1240 (10th Cir. 2006) (adopting the district court's decision, which had deemed the Plaintiff's summary judgment motion to be moot with the granting of the defendant's motion to dismiss).

<sup>3</sup> Mr. Branch's combination of a reply and a motion for summary judgment violated Local Civil Rule 7.1(e). However, the Court need not address the violation in light of the suggested ruling on grounds of mootness.

The parties enjoy the right to object to the present report and recommendation. Any such objection must be filed with the Clerk of this Court by July 25, 2011.<sup>4</sup> The failure to timely object would foreclose appellate review of the suggested ruling.<sup>5</sup>

The referral is discharged.

Entered this 8th day of July, 2011.

  
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Robert E. Bacharach  
United States Magistrate Judge

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<sup>4</sup> See 28 U.S.C. 636(b)(1) (2009 supp.); Fed. R. Civ. P. 6(a)(1)(C), 6(d), 72(b)(2).

<sup>5</sup> See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); cf. *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).